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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43473
)	
v.)	BANNOCK COUNTY
)	NO. CR 2008-19036
JAMES WEST-EATON,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

James West-Eaton appeals from the district court's order relinquishing jurisdiction and executing his unified sentence of seven years, with three years fixed, for sexual abuse of a child under the age of sixteen years. He contends the district court abused its discretion by relinquishing jurisdiction and by denying his motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reconsideration of sentence.

Statement of Facts and Course of Proceedings

Mr. West-Eaton was charged by Information with two counts of lewd conduct with a child under the age of sixteen years—one count pertaining to an eight-year-old girl

and one count pertaining to a seven-year-old girl. (R., pp.67-68.) Mr. West-Eaton allegedly touched the two victims on their genital area while babysitting them and their three siblings. (R., pp.23-28.) The State filed an Amended Information charging Mr. West-Eaton with one count of sexual abuse of a child under the age of sixteen years. (R., pp.83-84.) Mr. West-Eaton pled guilty to the amended charge. (R., pp.86-87.) The district court sentenced Mr. West-Eaton to a unified term of seven years, with three years fixed, and retained jurisdiction for a period of 180 days. (R., p.90.) On April 6, 2010, following the period of retained jurisdiction, the district court suspended Mr. West-Eaton's sentence and placed him on probation for a period of eight years. (R., pp.121-32.)

On November 1, 2011, a report of probation violation was filed in the district court, alleging Mr. West-Eaton violated his probation. (R., pp.142-44.) The State withdrew the report on December 19, 2011, and Mr. West-Eaton was continued on probation. (R., pp.149-52.)

On September 17, 2014, a second report of probation violation was filed in the district court, alleging Mr. West-Eaton had violated his probation. (R., pp.157-59.) Mr. West-Eaton admitted to violating his probation by having unapproved sexual contact with two adult females, owning a cell phone with internet access, viewing pornographic websites on his cell phone, and being suspended from sex offender treatment. (R., pp.157-58, 181.) On November 3, 2014, the district court revoked Mr. West-Eaton's probation and executed the original unified sentence of seven years, with three years fixed. (R., pp.181-89.) The district court retained jurisdiction for a period of 365

days with the recommendation that Mr. West-Eaton complete the retained jurisdiction sex offender program. (R., pp.184-86.)

On June 25, 2015, the district court relinquished jurisdiction over Mr. West-Eaton and executed the original sentence. (R., pp.193-97.) Mr. West-Eaton filed a timely Rule 35 motion requesting that the district court reconsider its decision to relinquish jurisdiction. (R., pp.198-99, 202-03.) On July 29, 2015, Mr. West-Eaton filed a notice of appeal. (R., pp.204-07.) The district court held a hearing on Mr. West-Eaton's Rule 35 motion on August 10, 2015. (R., p.210.) The district court entered an order denying that motion on August 12, 2015. (R., pp.213-14.) Mr. West-Eaton filed a motion for reconsideration on August 21, 2015, on the grounds that his attorney had failed to submit a letter Mr. West-Eaton had written to the court in support of his motion. (R., pp.217-21.) The district court dismissed Mr. West-Eaton's motion for reconsideration, which it deemed a second Rule 35 motion, for lack of jurisdiction. (R., pp.228-31.) Mr. West-Eaton filed an amended notice of appeal on September 22, 2015. (R., pp.232-35.)

ISSUES

1. Did the district court abuse its discretion when it relinquished jurisdiction over Mr. West-Eaton?
2. Did the district court abuse its discretion when it denied Mr. West-Eaton's Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Mr. West-Eaton

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. See *State v. Latneau*, 154 Idaho 165, 166 (2013); see also I.C. § 19-2601(4). The district court abused its discretion when it relinquished jurisdiction over Mr. West-Eaton because his behavior on his rider did not warrant relinquishment.

Mr. West-Eaton did not receive any disciplinary offense reports or infractions on his rider. (Conf. Exs., p.100). He was, however, determined to be a “behavioral concern” because he urinated on the bathroom floor, ordered commissary when it was not allowed, looked into the showers inappropriately, and shared coffee with another offender. (Conf. Exs., p.100.) Mr. West-Eaton did not take responsibility for his behaviors, which appeared to upset the staff at the North Idaho Correctional Institution (“NICI”). (Conf. Exs., p.100.) He was determined to present a “moderate-high risk to reoffend sexually” because of various factors including “intimacy deficits, emotional identification with children . . . general social rejection, impulsive acts, poor cognitive problem solving . . . and [lack of] cooperation with supervision.” (Conf. Exs., p.101.)

Mr. West-Eaton's behavior on his rider is indicative of his more general intellectual and social limitations. Mr. West-Eaton was abused by his biological parents as an infant and was adopted at the age of six months. (Conf. Exs., pp.31, 35.) He was diagnosed with a learning disability, ADHD and low IQ as a child, and attended special education classes in school. (Conf. Exs., pp.4, 37, 69-70.) He has struggled with immature—and inappropriate—behavior throughout his life. Indeed, the staff at NICI

recommended that the district court relinquish jurisdiction over Mr. West-Eaton after his first rider, back in 2009, because, among other things, he “was a significant disciplinary problem” and “did not develop reasonable insight into his thinking and behavior.” (Conf. Exs., pp.82.) The district court placed Mr. West-Eaton on probation then, perhaps recognizing the inherent nature of his limitations, and abused its discretion when it failed to do so here.

The staff at NICI recommended that the district court relinquish jurisdiction over Mr. West-Eaton because he “was unable to demonstrate any level of behavior change or simple acknowledgement of relevant negative behavior.” (Conf. Exs., pp.102-02.) The staff concluded it was “unacceptable” for Mr. West-Eaton to be “unable or unwilling” to identify his sexual behavior. (Conf. Exs., p.103.) Mr. West-Eaton was not able to change his behavior on his rider because of his low level of functioning. This deficit might make Mr. West-Eaton a bad candidate for a rider, but it does not mean he deserves incarceration. Mr. West-Eaton has no history of substance abuse and a very limited criminal history. Apart from the instant offense, his only criminal history was a misdemeanor charge of assault resulting from a fight with his sister. (Conf. Exs., pp.34, 41.) If released on probation, Mr. West-Eaton would live with his parents, who would provide for him a stable, supportive environment, and ensure that he avoids any criminal behavior. (Conf. Exs., pp.101-02.) He presents a low risk to re-offend and should not have been relinquished simply because he was inevitably unable to succeed on his rider.

II.

The District Court Abused Its Discretion When It Denied Mr. West-Eaton's Rule 35 Motion

Mr. West-Eaton filed a Rule 35 motion to request that the district court reconsider its decision to relinquish jurisdiction. (Tr., p.16, Ls.3-7) “Rule 35 confers upon the trial court authority to reconsider an order relinquishing jurisdiction and, if the court finds it appropriate, to place the defendant on probation notwithstanding having initially ordered a sentence of imprisonment into execution.” *State v. Goodlett*, 139 Idaho 262, 265 (Ct. App. 2003) (citation omitted). The district court abused its discretion in denying Mr. West-Eaton's Rule 35 motion and refusing to place him on probation in light of the additional information Mr. West-Eaton submitted to the court in support of his motion.

At the hearing on Mr. West-Eaton's Rule 35 motion, counsel for Mr. West-Eaton advised the district court that Mr. West-Eaton had completed multiple programs since being relinquished. (Tr., p.9, L.7 – p.11, L.1.) Counsel argued that Mr. West-Eaton's continued participation in programming minimized or negated his poor performance on his rider. (Tr., p.13, Ls.16-23.) Counsel for Mr. West-Eaton also advised the district court that Mr. West-Eaton had not had any disciplinary problems since being relinquished and could, if released on probation, live with his parents and obtain employment. (Tr., p.11, Ls.5-17.) Counsel explained to the district court, “[Mr. West-Eaton] has a stable living environment. His family is very supportive. They're not afraid to pull the trigger if they have to if he is not being compliant with the rules of the home.” (Tr., p.14, Ls.6-10.)

In light of this additional information, the district court abused its discretion in failing to place Mr. West-Eaton on probation. To the extent that the district court had

concerns about Mr. West-Eaton's ability to regulate his behavior outside the rider program, he proved that he could do so, and there is every indication that he would have been successful on probation.

CONCLUSION

Mr. West-Eaton respectfully requests that the Court vacate the district court's order relinquishing jurisdiction and place him back on probation. Alternatively, he requests that this case be remanded to the district court for a new rider review hearing and/or Rule 35 hearing.

DATED this 3rd day of February, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of February, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JAMES WEST-EATON
INMATE #93354
ICIO
381 W HOSPITAL DRIVE
OROFINO ID 83544

ROBERT C NAFTZ
DISTRICT COURT JUDGE
E-MAILED BRIEF

RANDALL D SCHULTHIES
BANNOCK COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas